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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

No. 781

TENNESSEE BURLEY TOBACCO GROWERS' ASSOCIATION,
Petitioner,

vs.

COMMODITY CREDIT CORPORATION.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

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To the United States Court of Appeals for the Sixth Circuit.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Tennessee Burley Tobacco Growers' Association (herein called "Association"), prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Sixth Circuit (herein called "Sixth Circuit"), entered September 2, 1965, in Cases Nos. 15,899 and 15,900, styled Tennessee Burley Tobacco Growers' Association, Appellee and Cross-Appel-

lant v. Commodity Credit Corporation, Appellant and Cross-Appellee. In Case No. 15,899 the Sixth Circuit reversed a judgment entered by the United States District Court for the Eastern District of Tennessee, Northeastern Division (herein called "District Court"), against Commodity Credit Corporation (herein called "Commodity") in the amount of $173,121.16. In Case No. 15,900 the Sixth Circuit affirmed the action of the District Court in refusing to award the Association an additional sum of $48,704.32.

Certified appendices record in said cases, with the proceedings in the Sixth Circuit, is furnished herewith in accordance with this Court's Rules.

OPINION BELOW.

The Sixth Circuit's opinion appears in Appendix A to this Petition (pp. A. 1a-22a), and in the certified appendices record. The opinion is reported at 350 F. 2d 35.

The District Court's opinion, judgment and supplemental order appear in Appendix A to this Petition at pp. A. 22a-38a, 38a, 39a, and in the certified appendices record at pp. 271a-288a, 288a and 289a.[1] Although the District Court's opinion was marked for publication, it has not been officially or unofficially reported.

JURISDICTION.

The judgments of the Sixth Circuit, for which complaint is herein made, were dated and entered September 2, 1965. This Court's jurisdiction is invoked under 28 U. S. C., Secs. 1254 (1) and 2101 (c).

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[1] Page references preceded by the symbols "A" or "B" are to the respective Appendices to this Petition, and page references without such symbols "A" or "B" are to the certified Appendices Record filed in this Court's Clerk's office under Rule 21.

BASIS FOR FEDERAL JURISDICTION IN THE DISTRICT COURT.

Jurisdiction of the District Court was invoked under 15 U. S. C., Sec. 714b (c) and was not disputed in either the District Court or the Sixth Circuit.

QUESTIONS PRESENTED.

1. Does the Agricultural Adjustment Act of 1949 (7 U. S. C. 1421 et seq.) require Commodity to reimburse a tobacco growers' cooperative for unrecouped overhead expenses incurred by the cooperative in administering for Commodity the tobacco price support program?

2. Was there a contract, either express or implied in fact, between Commodity and the Association which provided that the Association could recoup, either from proceeds from the sale of loan tobacco or from Commodity, expenses incurred by the Association in furtherance of the tobacco price support program?

3. Does the rule of agency law, which implies a promise by a principal to reimburse its agent for necessary expenses, obligate Commodity to reimburse the Association for overhead expenses incurred in furtherance of the tobacco price support program?

4. Do Commodity's standard tobacco loan agreements require a tobacco growers' cooperative to use its own funds, derived from consignment fees (referred to as loose floor income), to defray overhead expenses incurred by the cooperative in furtherance of the tobacco price support program?

STATUTES INVOLVED.

The statutory provisions involved are: 7 U. S. C. 1421 (a), 1425, 1428 (c) and 1441 (Agricultural Adjustment Act of 1949); 15 U. S. C. 714b (c), (g) and (m), and 714j (Commodity Credit Corporation Act); 28 U. S. C. 1346 (a) (2) (Tucker Act); March 2, 1919, C. 94, 40 Stat. 1272 (Dent Act); and Tennessee Code Annotated 43-1803 (Tennessee Cooperative Marketing Associations). These statutory provisions are set forth in Appendix B hereto.

STATEMENT OF THE CASE.

The Association sued Commodity for reimbursement of overhead expenses incurred by the Association in connection with the tobacco price support program (pp. 5a-8a). After trial without a jury, the District Court entered judgment in favor of the Association for $173,121.16 (p. 289a).

Thereafter Commodity appealed to the Sixth Circuit seeking a reversal of the judgment entered by the District Court and the Association filed a cross appeal asking the Sixth Circuit to increase the award by an additional $48,704.32 which had been disallowed by the District Court.

The Sixth Circuit reversed the judgment of the District Court against Commodity and dismissed the action. With respect to the cross appeal, the Sixth Circuit affirmed the judgment of the District Court.

STATEMENT OF FACTS.

The Association is a farmers' cooperative marketing association incorporated and existing under the Cooperative Marketing Laws of Tennessee (Sections 43-1801 to 43-1849, Tennessee Code Annotated) and has approx-

imately 70,000 grower members in Tennessee and North Carolina (p. 136a). Commodity had contracted with the Association to carry out the tobacco price support program in the burley markets in Tennessee for the crop years 1946 to 1955, inclusive, excepting 1953 (pp. 34a-49a, 119a, 122a, 273a).

Price support is made available by Commodity to growers of eligible tobacco through grower associations on the basis of official standard grades at a specified rate for each grade. The price support is accomplished by Commodity making loans to producer associations.

For each of the years involved Commodity and the Association entered into separate contracts in writing, referred to as "loan agreements".[2] Payment to growers of the support price under and through the loan agreements was accomplished in this manner: Burley tobacco is sold at auction in commercial warehouses. Tobacco growers bring their tobacco to an auction warehouse of their choice, and prior to sale it is graded by government graders. There, at previously established sales hours, buyers for the commercial tobacco companies bid on the tobacco. If the highest bid price on a lot or basket of tobacco is not more than one point above the support price established by the Department of Agriculture for that particular grade of tobacco then the tobacco is taken out of the regular commercial channels, the auction warehouseman pays the grower the established support price, the Association reimburses the warehouseman with funds borrowed from Commodity, the tobacco is pledged as collateral for the loan, and the Association then takes over the handling of the tobacco, arranging for it to be transported, redried, packed, stored, regraded when ap-

[2] In the burley tobacco area in which the Association operated, a crop year extends from December 1 through November 30. Thus the 1951 crop year was from December 1, 1951 through November 30, 1952 (p. 119a-120a).

propriate, and seeing to the sale thereof (pp. 122a-125a). The tobacco is sold in accordance with sales policies and prices established by Commodity and the proceeds of sale applied to repayment of the loan (pp. 126a-127a).

Generally, a tobacco crop is several years in liquidation. By regrading, through the aging process, and by reason of fluctuations in the market price tobacco generally will bring a better price at a later date (pp. 128a-129a). In the several years prior to 1951 during which Commodity contracted with the Association to administer the tobacco price support program, the crops had liquidated for a sum sufficient to repay the loans in full, with interest, and to cover all overhead expenses incurred by the Association in the handling and disposition of the crops (pp. 277a-279a). In one or more years prior to 1951 a profit or "net gains" had been realized and these were allocated to the growers in a proportionate manner, part of the net gains having been distributed in cash, the remainder having been allocated to the growers by name on the books of the Association and retained as an operating reserve (pp. 136a-137a).

The expenses incurred by the Association in the handling of these crops were of two kinds—"direct expenses" (that is, advances to growers, transportation, redrying, storage, etc.) and "indirect" or "overhead expenses" (various office, sales, etc. expenses) (pp. 125a-126a).

Under the contracts between Commodity and the Association, the latter was authorized to borrow from Commodity all direct expenses (p. 274a). As to overhead expenses, the contracts authorized the Association to deduct from the amounts paid to tobacco growers 12¢ per hundred-weight to be used in payment of overhead expenses (p. 35a). The contracts also authorized the Association to borrow additional sums for overhead expenses from Commodity if the Association chose to submit budgets

for such expenses, and it could borrow such expenses up to the amounts of budgets submitted and approved (pp. 43a, 242a-243a, 8b).

The amount in controversy in this action is for expenditures by the Association in connection with the handling of the 1951, 1952, 1954 and 1955 crops. Such expenditures involved amounts spent in excess of the 12¢ per hundred-weight and in excess of the amounts borrowed from Commodity. In all years that Commodity contracted with the Association, the latter, with the knowledge and acquiescence of Commodity, used funds in its treasury to pay a part of the overhead expenses (pp. 135a, 139a, 147a, 231a, 106b). The funds so used were those of tobacco growers—principally membership fees and profits or "net gains" realized from successful liquidation of prior crops which had been allocated on the books and records to the individual growers but which had been retained in the treasury of the Association as reserves (pp. 256a, 97b). By using these grower-member funds for these purposes, the interest expense of the Association to Commodity was reduced (p. 146a).

In handling the crops for the years 1946 to 1950, inclusive, the Association had expended more than it had borrowed for overhead expenses and these amounts were recouped upon the final sale or liquidation of the tobacco which went under loan in those crop years. In handling the 1951, 1952, 1954 and 1955 crops, the Association also expended more than it borrowed for overhead expenses, but such amounts were not recouped and are the subject of this litigation. In May, 1957, Commodity directed the Association to remit the gross proceeds from the sales of tobacco and the Association remitted such amounts (pp. 16a, 281a). In 1958 Commodity called the loan balances due on the 1951, 1952, 1954 and 1955 crops (pp. 105a, 281a). The Association could not pay and Commodity replevied the collateral, which consisted of some

15 million pounds of tobacco remaining on hand from these four crops (pp. 16a, 281a). Upon the sale of the crops by Commodity there was sufficient money to pay the principal sums of the loans but there was a deficiency of $1,207,273.59 in the total indebtedness, including interest (p. 117a). This deficiency was absorbed by Commodity as required by 7 U. S. C. 1425.

Briefly, it is the contention of Commodity that it is not obligated to reimburse the Association for overhead expenses incurred by the Association in excess of the amounts established by budgets approved by Commodity; that all amounts approved by Commodity to be loaned were, in fact, loaned. On the other hand, it is the contention of the Association, in brief, that by virtue of the mandate of the Agricultural Adjustment Act of 1949 Commodity was required to bear the overhead expenses involved herein, that under the loan agreements and the plan of operation, or pursuant to a promise implied in law, the Association was authorized to expend sums in addition to those borrowed, was entitled to recover said sums from the proceeds realized from the sale of the crops, and if the liquidation did not yield sufficient sums from which it could recoup these expenses it was entitled to be reimbursed by Commodity.

The District Court found, and it is not disputed by Commodity on appeal, that the sums in controversy were actually expended by the Association in furtherance of the tobacco price support program (pp. 282a-283a). As stated, Commodity did not contract with the Association for the crop year 1953 or for any crop year subsequent to 1955. Nevertheless, the 1951, 1952, 1954 and 1955 crops, or a portion thereof, were on hand for a number of years as sales efforts were being made in accordance with sales policies and price schedules established by Commodity, and a substantial portion of the sum in controversy is for expenses that were incurred during those

periods when the Association had the responsibility for the care and sale of the tobacco but had no contracts with Commodity and hence submitted no budget requests (pp. 196a-197a, 238a, 27b).

DECISION OF THE COURT OF APPEALS.

The Sixth Circuit's holdings in reference to the four issues material to this petition were as follows:

(1) It held that a tobacco growers' cooperative has no protection under 7 U. S. C. 1425 because such cooperative is not a "producer" within the meaning of that section.

(2) It construed Commodity's standard tobacco loan agreements to mean that Commodity is liable for only overhead expenses of the Association which were "approved in advance and included in loan payments".

(3) It held that in view of this construction of the agreements it was not necessary to pass upon the question of whether an implied promise obligated Commodity to reimburse the Association for the overhead expenses incurred in the tobacco price support program.

(4) It construed the agreements to mean that the Association could not recoup overhead expenses in the amount of $48,704.32 which had been paid by the Association out of funds owned by the Association and received from consignment fees.

REASONS FOR GRANTING THE WRIT.

QUESTION ONE.

The sweeping decision of the Sixth Circuit in holding that 7 U. S. C. 1425 gives no protection to a tobacco growers' cooperative makes that section inoperative in the tobacco price support program.

Under 7 U. S. C. 1421 (a), 1428 (c) and 1441, price support is mandatory for tobacco. 15 U. S. C. 714j authorizes Commodity, in the conduct of its business, to utilize producer-owned cooperatives. Since 1946, as reflected by Commodity's 1955 Tobacco Loan Docket, Commodity has carried out the tobacco price support program through these grower cooperatives. The reasons therefor are reflected in such Docket as follows:

> "The program will be carried out through grower associations, as the experience acquired in executing the 1946 through 1954 programs has demonstrated that this is an effective and reasonably satifactory method of supporting the price of eligible tobacco. Growers, acting individually, cannot on a practical basis arrange to have their tobacco processed, packed in hogsheads, or cases, and stored, so as to put it in acceptable condition as collateral for loan" (p. 54a).

Since Commodity makes no loans to the individual tobacco growers and if, as the Sixth Circuit held, a growers' cooperative is not a producer within the meaning of 7 U. S. C. 1425, then such section gives absolutely no protection in the price support program in the tobacco industry. That Congress did not intend such a result can be seen from the legislative history of the Agricultural Act of 1949 in which 7 U. S. C. 1425 was enacted. As noted above, for at least three years before enactment of the 1949 Act Commodity had administered the tobacco price support program by loans to cooperatives and not by loans to individual growers. The recommendation of the Committee on Agriculture and Forestry for the passage of the 1949 Act contained the following:

> "S. 2522 provides that all price support shall be made available to cooperators through the present system of loans, purchases, and other operations" (Vol. 2, U. S. Code Congressional Service, 1949, p. 2410).

Thus Congress, in making no change in the existing system of providing loans to cooperatives, must have intended 7 U. S. C. 1425 to protect the growers by protecting their cooperatives.

The Sixth Circuit reasoned that since each grower had received "the full 90% of parity price for his tobacco" there was no necessity for any protection which Congress provided in 7 U. S. C. 1425. However, while the farmer on the one hand was receiving 90% of parity price for his tobacco, nevertheless on the other hand he was being forced to give back to the tobacco price support program money with which to bear a portion of the overhead expenses of the program. Under the Cooperative Marketing Law of Tennessee[3] the Association was not organized to make a profit for itself and could not under such law but was organized to make profit for its members—the tobacco growers. Consequently, it was the growers' moneys which were used to bear the overhead expenses involved in this litigation. Congress certainly did not intend Commodity on the one hand to pay 90% of parity price to the farmer and with the other hand take back some of his money with which to bear a part of the costs of the price support program.

Commodity, in effect, concedes that a cooperative is "a producer" for certain purposes but not for others. It argues that the deficiency which Congress intended the Government to bear under 7 U. S. C. 1425 was the deficiency between the proceeds from the sale of tobacco and the amount of the loan made to the cooperative (193a, 284a). To conclude that the Government is responsible under 7 U. S. C. 1425 for the deficiency between the sales proceeds and the amount of the loan made to such cooperative must mean that the cooperative is "a producer"

[3] Section 43-1803 TCA, which is set forth at p. B. 43a of this Petition.

within that section. Thus, even Commodity's position relative to this statutory provision runs counter to the holding of the Sixth Circuit.

It is the Association's position that 7 U. S. C. 1425 does not limit the Government's liability to the deficiency between the proceeds from the sale of tobacco and the amount of the loan. The statute does not say that no producer shall be liable for a deficiency in a loan, but says that "no producer shall be personally liable for **any** deficiency arising from the **sale of the collateral** securing any loan". Furthermore, Commodity's Board of Directors recognized that the operating costs of the loan program would be borne by Commodity if the tobacco was not sold for enough to pay the loan and costs. In its Docket the Board said "the entire amount of the operating cost ultimately will be borne by producers, if the tobacco is sold for enough to repay the loan **and costs**" (p. 278a). As the District Court said:

> "To say that this statute contemplated deficiencies resulting only from sales of collateral for the loans is to impute to the Congress a narrow absolution inconsistent with the remedial recovery program it instituted" (p. 284a) (p. A. 34a).

Since the protection of 7 U. S. C. 1425 is of vital importance to tobacco growers and since, in view of the method by which the tobacco price support program is administered, the Sixth Circuit's opinion eliminates any protection to the grower which Congress intended by that section, we respectfully submit that this Court should review the holding of the Sixth Circuit.

QUESTION TWO.

The Sixth Circuit construed the agreements between Commodity and the Association to mean that Commodity was not liable for any overhead expenses incurred by the

Association in administering the price support program except those approved in advance by Commodity and included in loan advances. However, the Sixth Circuit did not point to any specific language in the contracts which expressly so provided. Apparently the Sixth Circuit reached this conclusion because it felt that to hold otherwise would mean that Commodity had no control over overhead expenditures made by the Association. If the Association were seeking in this litigation expenses incurred in other than furtherance of the price support program, then such argument of Commodity's lack of control might have merit. However, at the trial in the District Court, Commodity's counsel conceded that the sum sued for was spent in furtherance of the price support program (pp. 198a-199a) and, with the exception of one witness, all of the Government officials who testified conceded that the Association's disbursements involved in this action were related to the administration of such program (p. 282a).[4]

Furthermore, we respectfully insist that the express language of the tobacco loan agreements negates the conclusion of the Sixth Circuit that Commodity was not liable for any overhead expenses except those included in loan payments. Paragraph 11 (a) of the 1951 Agreement and paragraph 12 (a) of the Agreements for the other three years provided that upon any sale of loan tobacco by the Association it would remit to Commodity for application on the loan the net proceeds from such sale "i. e., the gross proceeds, less accrued charges with respect to such tobacco which have been approved by Commodity **but for which no amount has been loaned by Commodity to the Association**" (p. 7b). (Emphasis supplied.)

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[4] In addition, after the Association had made its claim for these expenses and before suit was instituted, the Department of Agriculture performed a detailed audit of such expenses and verified them as having been expended for overhead purposes. The Department auditors developed that the Association's claim at that time was understated by $1,599.44 (pp. 22b-37b).

We submit that the determination of whether Commodity has expressly through these agreements eliminated the tobacco growers' rights to recoup overhead expenses concededly spent in the price support program, is vital and important not only to the 70,000 tobacco farmers who are members of this Association, but also to all tobacco growers since their price support programs are likewise administered through agreements between Commodity and growers' cooperatives.

QUESTION THREE.

Since the Sixth Circuit held that the agreements between the parties mean that the Association could not recover the overhead expenses involved herein, the Sixth Circuit did not pass upon the question of whether or not agency law implies a promise by Commodity, the principal, to reimburse the Association, its agent, for expenses incurred in administering the price support program. The Sixth Circuit stated that such agency rule was applicable only "in the absence of terms to the contrary in the agreement" (p. A. 16a). We respectfully insist that there were no terms to the contrary in the agreements. The District Court stated that he could find no specific provision in the agreements on this particular subject.[5] As noted above, if the agreements indicated anything on this subject they indicated that the Association was entitled to recoup the overhead expenses sued for herein. However, if, as we insist, the District Court was correct in holding that the agreements contained no provisions on the subject, then the law of agency implies a promise by

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[5] The District Court stated: "In so far as the Court can ascertain, however, there was no specific agreement between the parties as to which would bear any loss arising from the administration of the support program if the collateral was not resold for a sufficient amount to bear all such expenses" (p. 275a).

Commodity to reimburse the Association for the overhead expenses involved herein.

That rule is applicable if (1) the relationship between Commodity and the Association was that of principal-agent, and (2) the Association either (a) suffered a loss which "it is fair that the principal should bear", or (b) made payments "upon obligations arising from the possession or ownership of things which [it was] authorized to hold on account of the principal." Restatement, Agency 2d, Sections 438 (2) (b) and 439 (b).

The District Court held that the Association was the agent of Commodity (pp. 273a and 285a). The fact that the relationship between Commodity and the Association was that of principal and agent has also previously been adjudicated in other actions. **Neas v. Tennessee Burley Tobacco Growers' Association,** 204 Tenn. 405, 321 S. W. 2d 802, and **Range v. Tennessee Burley Tobacco Growers' Association,** 41 Tenn. App. 667, 298 S. W. 2d 545, Cert. Den. 355 U. S. 813, 2 L. Ed. 30.[6] Commodity was not a party in these cases but they are *stare decisis.* In addition, however, in a bankruptcy proceeding involving the Association, Commodity was a party by filing a petition for specific performance of certain loan agreements (p. 38b).[7] The Referee in Bankruptcy likewise held that the relationship between those two parties was that of principal

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[6] In the **Range** case the Tennessee Court said at page 687: "The contracts of the Association with Commodity Credit Corporation created the relationship of principal and agent between them . . .", and in the **Neas** case the Court said at page 411: "The adjudication in the Range case is that the tobacco growers involved were entitled to a distribution pro rata in cash of these profits, and that it is the duty of the Association, the agent of Commodity Credit, to so distribute these profits. This adjudication is *stare decisis.*"

[7] In the bankruptcy proceeding Commodity asserted that the **Range** and **Neas** cases were *res judicata* as to these parties, but in this litigation Commodity asserts they are not *res judicata* (pp. 43b-44b).

and agent (pp. 43b-44b). Such holding by the Referee is *res judicata* in this case. See **Davis v. McKinnon & Mooney**, 266 F. 2d 870.

Since the relationship between the parties was that of principal and agent, the law implies a promise by Commodity to reimburse the Association for the expenses involved herein because it is fair and equitable for Commodity to bear such expenses. Restatement, Agency 2d, Section 438 (2) (b). When Commodity sold the tobacco which it replevied from the Association, and which was the collateral for the loans made to the Association, Commodity recouped every dollar of the principal amount of its loans to the Association and, in addition, recovered approximately $1,000,000.00 in interest on that principal. Furthermore, the Association, by using its own funds for the overhead expenses involved herein, saved Commodity the use of the moneys which the Association would otherwise have borrowed from Commodity. Yet the Sixth Circuit holds that the individual farmers must bear such expenses which were incurred in furtherance of the tobacco price support program rather than have Commodity bear them.

Commodity is also obligated under the rule of agency law to reimburse the Association for the expenses involved herein because the payments were made by the Association "upon obligations arising from the possession . . . of things which [it was] authorized to hold on account of the principal" (Commodity). Restatement, Agency 2d, Section 439 (b). The loan agreements required the Association to look after the tobacco which was the collateral for the loans, see that the warehousemen who purchased the tobacco from the growers were paid the support price, and then handle the transporting, insuring, redrying, recording, regrading, fumigating, packing, sampling, inspecting, storing and selling of the tobacco (p. 274a). Hence, the overhead expenses incurred

by the Association and involved in this litigation arose from the possession of the tobacco which it was "authorized to hold on account of the principal."[8]

Commodity asserted in this litigation that the implied contract rule of agency law was inapplicable against the Government and cited cases construing the Tucker Act (28 U. S. C. 1346) and the Dent Act (March 2, 1919, C. 94, 40 Stat. 1272). Those Acts, however, limited suits against the Government to those founded on "express or implied" contracts or agreements. The Commodity Credit Act, 7 U. S. C. 714b (c), contains no such limitations but provides that Commodity "may sue and be sued," excepting certain extraordinary relief such as attachment, injunction, garnishment and other similar process. As this Court has repeatedly held, when Congress endows a governmental agency with power to sue and be sued, that agency is amenable to judicial process the same as any private enterprise. **Keifer & Keifer v. Reconstruction Fi-**

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[8] While this principle is applicable to the Association's entire claim for overhead expenses borne by it, nevertheless this rule has particular applicability in reference to the overhead expenses borne by the Association during the crop years 1953, 1956 and 1957. During those three crop years the Association had no Loan Agreement with Commodity. Yet during the crop years 1953 and 1956 and during a portion of the crop year 1957 (until Commodity replevied the tobacco) the Association, with the consent and permission of Commodity, held for Commodity tobacco subject to loans made for the 1951, 1952, 1954 and 1955 crops and thus incurred overhead expenses during 1953, 1956 and 1957 in administering the tobacco price support program. Overhead expenses for the crop year 1953, in excess of those allocated to an earlier crop, and for the crop year 1956 and a portion of the crop year 1957 (until the tobacco was replevied) were:

1953	$ 54,215.89
1956	40,157.87
1957	15,767.95
or a total of (p. 35b).	$110,141.95

Such overhead expenses are included as a part of the Association's claim in this action.

nance Corporation, 306 U. S. 381, 83 L. Ed. 784; **Federal Housing Administration v. Burr**, 309 U. S. 242, 94 L. Ed. 724. See also **United States v. Edgerton & Sons, Inc.**, 178 F. 2d 763 (1949). In addition, 7 U. S. C. 714b (g) gives Commodity the power to enter into contracts and agreements, and 7 U. S. C. 714b (m) grants Commodity "all such incidental powers as are customary in corporations generally" (p. B. 42a).

We respectfully submit that it is of vital importance to all tobacco growers' cooperatives administering the price support program for this Court to review whether or not Commodity is obligated under an implied promise to reimburse its agents, the cooperatives, for expenses incurred in furtherance of the tobacco price support program.

QUESTION FOUR.

The Sixth Circuit, on the cross appeal by the Association, held that the Association is not entitled to recoup the portion of overhead expenses incurred in furtherance of the price support program which were paid by the Association from funds derived from its loose floor income. This decision runs counter to a decision which is *res judicata* beween the parties. In the bankruptcy proceeding, upon a petition filed by Commodity, the Referee held that Commodity and the Association intended for the Association to recoup the overhead expenses which it had "temporarily borne out of its own funds".[9] No appeal was taken by Commodity from that holding of the Referee (p. 17a). Consequently, this question has been resolved and Commodity is obligated under that holding to reimburse the Association for the funds temporarily used by the Association.

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[9] The Referee said: "The intent of the parties was that the Bankrupt would recoup such overhead expenses which it had temporarily borne out of its own funds" (p. 48b).

While the Association recognizes that Question Four involves matters only between Commodity and the Association, nevertheless if this Court grants the petition to review the first three questions set forth above, it respectfully requests this Court to review Question Four also because of its importance to the 70,000 tobacco growers who are members of the Association and whose rights are involved herein.

CONCLUSION.

Petitioner prays that this petition for writ of certiorari be granted and that a writ of certiorari issue to review the decision and judgment of the Sixth Circuit entered in Cases Nos. 15,899 and 15,900.

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APPENDIX.

APPENDIX A.

Nos. 15899-900.

United States Court of Appeals
for the Sixth Circuit.

Tennessee Burley Tobacco Growers' Association, Appellee and Cross-Appellant, v. Commodity Credit Corporation, Appellant and Cross-Appellee.	On Appeal from United States District Court Eastern District of Tennessee, Northeastern Division.

Decided September 2, 1965.

Before: Miller and Phillips, Circuit Judges, and McAllister, Senior Circuit Judge.

Phillips, Circuit Judge. In this action for breach of contract the Tennessee Burley Tobacco Growers' Association, plaintiff, seeks to recover from Commodity Credit Corporation, defendant, for overhead expenses incurred by the Association in connection with the tobacco price support loan program.

The district judge, sitting without a jury, entered judgment in favor of the Association for $173,121.16, and Commodity has appealed. The Association has filed a cross-appeal, contending that it is entitled to recover an additional $48,704.32 and that its judgment should be increased to $221,825.48.

Jurisdiction is invoked under 15 U. S. C., § 714b (c), and is not disputed.

We reverse the judgment against Commodity and affirm as to the cross-appeal.

The plaintiff, referred to herein as the Association, is a farmers' cooperative marketing association, incorporated in 1946 under the cooperative marketing laws of the State of Tennessee. T. C. A., §§ 43-1801—43-1849. Its membership consists of more than 70,000 Tennessee tobacco growers. It was utilized by defendant in the conduct of the tobacco price support loan program in Tennessee during the crop years 1945 through 1955 except for 1953. This litigation involves the 1951, 1952, 1954 and 1955 crop years.

The defendant, referred to herein as Commodity, is a corporate agency and instrumentality of the United States, created by the Commodity Credit Corporation Charter Act, 15 U. S. C., § 714 et seq., through which the Secretary of Agriculture conducts price support loan programs for tobacco and certain other agricultural commodities. The programs for the years here involved were administered under the Agricultural Act of 1949, as amended, 7 U. S. C., § 1421 et seq.

Factual Background.

Commodity was created for the purpose, among others, of "stabilizing, supporting and protecting farm income and prices." 15 U. S. C., § 714. One of its objectives is to assure a minimum price to farmers by placing a floor under the price of certain agricultural commodities. 1948 U. S. Congressional Service, p. 2145.

The status of Commodity was described by the Supreme Court in **Rainwater v. United States**, 356 U. S. 590, 591-92, as follows:

> "Commodity is an 'agency and instrumentality of the United States, within the Department of Agri-

culture, subject to the general supervision and direction of the Secretary of Agriculture.' It was created by Congress to support farm prices and to assist in maintaining and distributing adequate supplies of agricultural commodities. Its capital was provided by congressional appropriation. Any impairment of this capital, which at times has been great due to the nature of its activities, is replaced out of the public treasury; and gains are returned to that treasury. All of its officers and other personnel are employees of the Department of Agriculture and are compensated as such. Like other government corporations, Commodity is subject to the provisions of the Government Corporation Control Act which provides such close budgetary, auditing and fiscal controls that little more than a corporate name remains to distinguish it from the ordinary government agency. In brief, Commodity is simply an administrative device established by Congress for the purpose of carrying out federal farm programs with public funds."

Relevant statutory powers of Commodity are set forth in the margin.[1]

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[1] 15 U. S. C., § 714b:

"(c) May sue and be sued, but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Corporation or its property. * * *

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"(e) Shall have all the rights, privileges, and immunities of the United States with respect to the right to priority of payment with respect to debts due from insolvent, deceased, or bankrupt debtors. The Corporation may assert such rights, privileges, and immunities in any suit, action, or proceeding.

* * * * * * * * *

"(g) May enter into and carry out such contracts or agreements as are necessary in the conduct of its business. State and local regulatory laws or rules shall not be applicable with respect to contracts or agreements of the Corporation or the parties thereto to the extent that such contracts or agreements provide that such laws or rules shall not be applicable, or to

Pursuant to these powers Commodity entered into loan agreements with the Association for the purpose of supporting tobacco prices for the crop years 1946 through

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the extent that such laws or rules are inconsistent with such contracts or agreements.

* * * * * * * *

"(j) Shall determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid.

* * * * * * * *

"(l) May make such loans and advances of its funds as are necessary in the conduct of its business."

Section 714c, 15 U. S. C., defines the specific powers of the Corporation. One of these specific powers is to support the prices, of agricultural commodities through loans, purchases, payments and other operations. In the performance of these functions the section directs that:

> ". . . the Corporation shall, to the maximum extent practicable consistent with the fulfillment of the Corporation's purposes and the effective and efficient conduct of its business, utilize the usual and customary channels, facilities, and arrangements of trade and commerce."

Further provision is made for the carrying out of the purposes of Commodity in 15 U. S. C., § 714j:

> "The Corporation may, in the conduct of its business, utilize on a contract or fee basis, committees or associations of producers, producer-owned and producer-controlled cooperative associations, and trade facilities."

The legislative history of the latter section includes the following:

> "In carrying out its price-support program the Corporation utilizes normal trade facilities to the fullest practicable extent. Thus, where loans are made to farmers the Corporation makes use of local banks, cooperatives, and other private lending agencies by entering into contracts with such lending agencies under which the Corporation agrees to take over loans made in accordance with the Corporation's program. In addition, the Corporation enters into contracts with processors and dealers under which they buy through normal trade channels agricultural commodities at support prices for the account of the Corporation or for their own account. In the latter event the Corporation generally agrees with the processors and dealers, upon specified terms and conditions, to take over their inventories of such agricultural commodities or products processed therefrom, or otherwise gives them protection against loss arising out

1955, except for 1953.[2] During the relevant crops years, the price support level for burley tobacco was ninety per cent of a predetermined fixed price, called "parity". Basically the loan agreements provided that Commodity would make low interest non-recourse loans to the Association for the purchase of tobacco and for the payment of direct and overhead expenses of the Association in its handling, storage and reselling, when approved by Commodity as reasonable and necessary.

The program established under the loan contracts operated in this way: The growers brought their tobacco to an auction warehouse, where it was graded according to quality and condition before being offered for sale. Commercial tobacco buyers were afforded an opportunity to bid on all such tobacco. If the bid price on the grower's tobacco was not more than one bid above the support price for that particular grade, the Association bought the to-

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of the purchase of commodities at the support prices." 1948 U. S. Code, Congressional Service, p. 2146.

"Section 12 permits the Corporation to utilize, on a contract or fee basis, committees or associations of producers, producer-owned and producer-controlled cooperative associations, and trade facilities. Most of the Corporation's price-support operations are carried out in the field through the agricultural conservation committees and associations. The Corporation also utilizes to the fullest practicable extent the facilities of producer-controlled cooperative associations and trade facilities, such as local banks, warehouses, commodity handlers and processors. For example, commodity loans are generally made in the first instance by local banks with which the Corporation has contracts obligating it to take over the loans upon request. It has also carried out many of its price-support operations by contracts with processors and handlers under which they agree to purchase commodities at support prices in return for the Corporation's undertaking to protect them against loss because of such purchases." 1948 U. S. Code, Congressional Service, p. 2153-4.

[2] A crop year extends from December 1 through November 30. Thus, the 1951 crop year was from December 1, 1951, through November 30, 1952.

bacco at the support price. The auction warehouseman paid the grower the support price and was subsequently reimbursed by the Association out of money loaned to the Association by Commodity for that purpose. The Association would then re-dry and store the tobacco in warehouses until it was later resold.

It was the hope of both the Association and Commodity that the tobacco purchased by the Association from growers with government funds would be sold later at higher prices, either because of an increase in the market price or because the tobacco would improve with age. For the years prior to 1951 the crops ultimately were sold for a profit which was more than sufficient to cover the purchase price and all expenses. The money borrowed by the Association from Commodity was repaid in full. Part of the balance was distributed by the Association among the growers and the remainder was held by the Association in reserve.[3]

For the crop years 1951, 1952, 1954 and 1955, there was a deficiency of $1,207,273.29 between the amount of the loans, including interest, and the amounts ultimately realized from the sale of the tobacco. This deficiency was absorbed by Commodity.

Because of disagreements between Commodity and the Association, no loan contracts were entered into for 1953 or after the 1955 crop year. The Association continued to hold the remaining portions of the 1951, 1952, 1954 and 1955 tobacco crops which were collateral for the loans for those years. Upon demand of Commodity, the Association

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[3] The refusal of the Association to distribute all of the net profits to growers in cash resulted in protracted litigation in Tennessee courts. See **Range v. Tennessee Burley Tobacco Growers' Association,** 41 Tenn. App. 667, 298 S. W. 2d 545 (1955); **Neas v. Tennessee Burley Tobacco Growers' Association,** 204 Tenn. 405, 321 S. W. 2d 802 (1959).

from and after May 20, 1957, remitted to Commodity the gross proceeds from the sale of said tobacco from time to time as sold. On May 21, 1958, Commodity called the loans on the crops for these four years, and, upon non-payment, pooled all such tobacco. In August 1958 Commodity replevied the remainder of the tobacco, and sold it in 1960 for $11,153,944.38. The total of the outstanding loans owed by the Association to Commodity, including interest, was $12,361,217.97. As heretofore stated, this deficiency of $1,207,273.59 was borne by Commodity and is not in dispute in this litigation.

On June 30, 1957, the Association was adjudged a bankrupt. The complaint in this cause was filed by the trustee in bankruptcy. Later a determination was made that the trustee had in his possession assets over and above that necessary to bear all costs of administration. The trustee thereupon assigned to the Association all such properties and assets, including this right of action, and the Association was substituted as party plaintiff. The record indicates that the Association has a present net worth of $300,000 or more.

The Present Controversy.

The present controversy involves overhead expenses incurred by the Association for the 1951, 1952, 1954 and 1955 crop years. The Association contends that Commodity is obligated to reimburse it for these expenses.

It is contended by Commodity that under the terms of the loan agreements the overhead expenses of the Association were to be financed in two ways: First, the members of the Association paid to it twelve cents per hundredweight for all the tobacco sold, and the tobacco warehousemen paid three cents per hundredweight, which the warehousemen in turn collected from the growers. Second, if

overhead expenses in excess of these charges were approved by Commodity, non-recourse loans were made to the Association for the approved amounts. In addition, if the Association desired to expend greater sums for expenses, it could do so from its own funds,[4] but at its own risk and without any right of reimbursement.

All of the overhead expenses included in the judgment of the district court were paid by the Association out of its own funds. No part of the overhead expenses here involved were borrowed from Commodity.

The question to be determined in this case is whether or not Commodity is liable to the Association for the reimbursement of these expenses.

Judgment of the District Court.

One of the issues presented in the district court was the meaning and interpretation of the contracts between the parties. The Association contended that under the terms of the contracts for the crop years in question Commodity agreed to reimburse it for unrecouped overhead expenses incurred in excess of those approved and advanced by Commodity. Commodity contended to the contrary, maintaining that under the provisions of the contracts it was responsible only for those overhead expenses which it approved and for which it made loans.

The district court did not resolve this disputed issue of contract interpretation, saying:

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[4] The Association had funds of its own derived from such sources as $3.00 lifetime membership dues collected from its members, loose floor income, consignment fees, interest income, gains on the sale of fixed assets, patronage refunds from other cooperatives, profits from storage warehouse operations and miscellaneous income. It also held reserves from undistributed net gains from the ultimate sale of tobacco crops for prior years in excess of the amounts of loans, all of which had not been distributed to growers. See cases cited in third footnote.

"In so far as the Court can ascertain, however, there was no specific agreement between the parties as to which would bear any loss arising from the administration of the support program if the collateral was not resold for a sufficient amount to bear all such expenses."

Although not holding as a matter of contract interpretation that Commodity had agreed to reimburse the Association for unapproved and unrecouped overhead expenses in excess of the amounts advanced, the court held that Commodity is liable for these expenses on two grounds:

First, that liability for these expenses is imposed upon Commodity by 7 U. S. C., § 1425, regardless of the provisions of the contracts between the parties. On this point the district court said:

"The Congress has declared by statute that no producer shall be personally liable for any deficiency arising from the sale of the collateral securing any loan made under the authority of the Agricultural Adjustment Act of 1949 except where the producer obtains the loan by means of fraudulent representations. 7 U. S. C., § 1425. The obvious intention of the Congress in this enactment was to relieve fraud-free growers of any pecuniary responsibility from the administration by the Secretary of Agriculture of the price support program . . .

"The plaintiff is a cooperative marketing association of burley tobacco producers. The legislative history of the Agricultural Adjustment Act of 1949, and earlier statutes of similar import, indicate to this Court that the Congress intended that the pecuniary responsibility for the administration of the price support program would be borne by the Government, not by the producers. * * * [T]he contract between these parties derived its efficacy from the Agricultural Ad-

justment Act of 1949, and earlier statutes of similar nature, and it is circumscribed by all the pertinent provisions of that statute. * * * Commodity could not, by contractual provisions or otherwise, deprive these producers of the absolution the Congress granted them by statute."

Second, that the Association was the agent of Commodity, and ". . . the law implies a promise of reimbursement for necessary expenses advanced or incurred by the Association in order to consummate what the Association agreed to do, where the acts were in the scope of its agency."

Is the Association a Producer?

The first question to be determined on this appeal is whether the Association is a "producer" within the meaning of 7 U. S. C., § 1425.[5] The holding of the district court that this statute imposes upon Commodity the legal obligation to reimburse the Association for overhead expenses incurred by it cannot stand unless the Association comes within the statutory term "producer."

The definition section of the Agricultural Act of 1949, 7 U. S. C., § 1428, does not specifically define producer, but does define a producer who complies with acreage allotments:

> "(b) A 'cooperator' with respect to any basic agricultural commodity shall be a **producer on whose farm** the acreage planted to the commodity does not exceed the farm acreage allotment for the commodity

[5] This section is entitled "Personal liability of producers for deficiencies" and provides as follows:

> "No producer shall be personally liable for any deficiency arising from the sale of the collateral securing any loan made under authority of this Act unless such loan was obtained through fraudulent representations by the producer. * * *"

> under sub-chapter II of chapter 35 of this title, or in the case of price support for corn or wheat to a producer outside the commercial corn-producing or wheat-producing area, a producer who complies with conditions of eligibility prescribed by the Secretary. For the purpose of this subsection, a producer shall not be deemed to have exceeded his farm acreage allotment unless such producer knowingly exceeded such allotment." (Emphasis supplied.)

In **United States v. Appling**, 239 F. Supp. 185, 191 (S. D. Texas), the court said:

> "Under the Agricultural Act of 1949 (7 U. S. C. A., § 1421, et seq.) a producer is entitled to aid by price support if he is a 'cooperator.' A cooperator is a **producer on whose farm** the acreage planted to the commodity does not exceed the farm acreage allotment. 7 U. S. C. A., § 1428 (b). (Emphasis supplied.)

The use in this statutory definition of the phrase "a producer on whose farm" strongly indicates that by the term "producer" Congress meant individuals or organizations having farms and raising commodities thereon.

The basic definition of a "producer" is "one who **grows** agricultural products . . ." (Emphasis supplied.) Webster's Third New International Dictionary, Unabridged.

The term producer is "commonly used to denote a person who raises agricultural crops and puts them in a condition for the market." **Allen v. Smith**, 173 U. S. 389, 399; **Pampanga Sugar Mills v. Trinidad**, 279 U. S. 211, 217.

In **Puckett v. Sellars**, 235 N. C. 264, 69 S. E. 2d 497, 499, which involved marketing provisions of the price support program, the court said:

> "**It is the producer who is granted the production quota.** It is he who overproduces, and the penalty is

intended to penalize him for his overproduction. He markets the tobacco . . ." (Emphasis supplied.)

In ascertaining the meaning of the word "producer" we also look to the regulations of the Department of Agriculture.

Federal Crop Insurance Corporation v. Merrill, 332 U. S. 380; **Weir v. United States,** 310 F. 2d 149, 154 (C. A. 8). In the regulations relating to price support for tobacco for the 1955-56 marketing years, an "eligible producer" for the purpose of the tobacco price support program was defined as one for whom a marketing card had been issued under the regulations dealing with tobacco marketing quotas for the 1955-56 marketing years. 20 Federal Register 3525. The tobacco marketing quota regulations for the 1955-56 years in turn define a "producer" as "a person who as **owner, landlord, tenant, sharecropper, or laborer,** is entitled to share in the tobacco available for marketing from the farm . . ." (Emphasis supplied.) 20 Federal Register 4107. Similar provisions are contained in the regulations relating to tobacco price support and tobacco marketing quotas for the others years involved in this case.

The Association as an entity does not own or operate farms and does not produce tobacco. It only receives tobacco from the growers that do produce it. We hold that the term "producer" is used in the statute in its ordinary sense, and is intended to apply to persons or organizations that grow tobacco, such as the owner of a farm, tenant on a farm, a sharecropper or similar person. The term does not encompass an incorporated organization such as the Association here involved which does not grow crops, but merely receives them from producers for handling.

Commodity's utilization of such an Association in the tobacco price support program does not make the As-

sociation a "producer" within the meaning of the statute. "Congress in adopting Section 1425 simply intended to absolve producers from personal liability for loan deficiencies resulting from sales of pledged commodities at price levels lower than the support prices in force at the time the loan was made . . ." **Autrey v. Commodity Credit Corporation**, 143 F. Supp. 550, 554 (W. D. Ark.). There was full compliance with the statute when the growers received ninety per cent of the parity price for their tobacco and Commodity absorbed the entire loan deficiency arising from the sale of the tobacco.

The district court apparently adopted the reasoning that since the Association is a cooperative whose members are producers, the Association itself should be treated as a producer. A similar argument was rejected by the Supreme Court in **United States v. Rock Royal Co-op**, 307 U. S. 533, 578-581. In that case an Association which handled milk produced by its members argued that for purposes of a milk marketing order issued by the Secretary of Agriculture under Section 8c of the Marketing Agreement Act, 7 U. S. C. § 608c, the Association was the alter ego of its producer members and should be treated as a producer rather than a handler. The Supreme Court pointed out that the "cooperative owns no farms" and that it merely receives milk from its members and distributes it (307 U. S. at 578), and held that the cooperative was a handler and not a producer. To like effect see **Elm Spring Farm v. United States**, 127 F. 2d 920 (C. A. 1); **Lucas County Farm Bureau Cooperative Association v. N. L. R. B.**, 289 F. 2d 844, 845 (C. A. 6), cert. denied 368 U. S. 823.

By the terms of the Cooperative Marketing Association Act of Tennessee, TCA §§ 43-1801 — 43-1849, under which the Association was chartered, it is an entity separate and apart from its members. TCA § 43-1803 defines an association as "any corporation organized under this law,"

and refers to members of such an association as "producers". The state statute provides for articles of incorporation, by-laws, a board of directors, an executive committee, a president, vice-presidents, a secretary and a treasurer. Under the terms of T. C. A. § 43-1845, the provisions of the general corporation laws of Tennessee and all powers and rights thereunder are made applicable to such associations except where in conflict or inconsistent with the Cooperative Marketing Association Act. T. C. A. § 43-1825 expressly provides that:

> "No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof."

Under the provisions of this latter statute as well as under 7 U. S. C., § 1425, the producer-members of the Association are not liable for deficiencies in loans made by Commodity to the Association.

It thus appears that each grower (i. e. producer) in this case has been paid the full ninety per cent of parity price for his tobacco. Commodity has not sought and does not seek to hold any grower personally liable for any part of the loan deficiency. The Association already has paid the overhead expenses which it now seeks to recover. If it fails to recover these expenses from the Government, this will not result in any grower having to give up any of the ninety percent of parity price which he already has received for this tobacco. The reversal of the judgment of the district court will not result in any grower becoming personally liable for any part of the deficiency arising from the sale of the collateral tobacco.

We hold that the Association is not a producer within the meaning of the statute and that the district court erred

in ruling that this statute renders Commodity liable for overhead expenses incurred by the Association regardless of the provisions of the contracts between the parties.

Is Commodity Liable Under an Implied Promise to Reimburse Expenses?

The second question to be determined is whether the district court was correct in the following holding:

> "The Association was engaged by the defendant Commodity to perform detailed functions in behalf of the latter; and, under such circumstances, the law implies a promise of reimbursement for necessary expenses advanced or incurred by the Association in order to consummate what the Association agreed to do, where the acts were in the scope of its agency."

We reemphasize that this second ground for the judgment of the trial court is based upon the theory of **implied** promise to pay, and not upon a holding that Commodity has obligated itself by contract to reimburse unrecouped overhead expenses paid by the Association out of its own funds.

This issue, in turn, poses other serious questions, including these:

1. Was the relationship between the parties that of principal and agent, as held by the district court, or simply that of creditor-debtor as insisted by Commodity?

2. Did Commodity have the power to confer upon the Association the status of agent of the United States with authority to incur expenses reimbursable as Government obligations as a matter of right?

3. Assuming that the answer to the second question is in the affirmative and that the relationship between the parties was that of principal and agent, does the rule of the

law of agency, that there exists a promise implied in law that the principal will reimburse the agent for necessary expenses even though the principal did not expressly authorize or contract to reimburse such expenses, apply as against the United States?

These three intriguing questions have been briefed and argued thoroughly, but we do not find it necessary to pass upon them in this case. We conclude that the issue of the liability or nonliability of Commodity for the overhead expenses of the Association is controlled by the agreements between the parties. The rule that a promise is implied on the part of the principal to reimburse his agent for necessary expenses does not apply under the facts in this case, where the limits of Commodity's liability for such expenses are prescribed by contract. Therefore, assuming, but not deciding, that (1) the Association was the agent of Commodity, (2) that Commodity had the authority to create such an agency relationship, and (3) that the rule of a promise of reimbursement implied in law might apply against an agency of the United States, nevertheless this rule of indemnity is applicable only "in the absence of terms to the contrary in the agreement." Restatement, Agency 2d, § 438.

The rights and obligations of Commodity and parties contracting with it "depend on the terms and conditions of the particular contract construed and enforced in accordance with general principles of law and in the light of applicable statutes." 91 C. J. S., **United States**, § 70, p. 140; cf. **Commodity Credit Corporation v. Worthington**, 263 F. 2d 178 (C. A. 4), cert. denied, 359 U. S. 1012; **Commodity Credit Corp. v. Rosenberg Bros. & Co.**, 243 F. 2d 504, 508 (C. A. 9), cert. denied, 355 U. S. 837; Restatement, Agency 2d, § 376.

The Contracts Between the Parties.

Accordingly we now turn to the provisions of the agreements between the parties, which we deem to be controlling. Separate loan contracts were executed by Commodity and the Association for each of the crop years in question, the terms of which were substantially identical. Pertinent extracts from the 1955 contract, which were also incorporated in the loan contracts for the other years in question, are quoted in the margin.[6]

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[6] "1. Commodity agrees to make a loan to the Association upon the security of loan tobacco as defined in paragraph 2 hereof and upon the security of reusable hogsheads purchased by the Association. Such loan shall consist of the amounts set out in subparagraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this paragraph, but shall not exceed a total of $5,000,000.00. Commodity shall have the right to reduce or increase the maximum commitment set out in this paragraph at any time upon notice to the Association: Provided, That any reduction shall not apply with respect to tobacco marked for or delivered to the Association prior to the time of such notice. Such loan shall bear interest at the rate of three and one-half (3½) percent per annum.

"(a) An amount for each pound of loan tobacco, computed in accordance with Exhibit A, on the basis of green weight (farm sales weight): Provided, That such amount shall not exceed the amount advanced by the Association to the grower with respect to such tobacco except for the deduction of 12 cents per cwt. which the Association makes to apply against the overhead expenses of the Association, and such other deduction as may be authorized or approved by Commodity.

"(b) An amount to cover overhead expenses of the Association in connection with loan tobacco, subject to the following conditions:

"(1) Request for payment shall be made only as funds are currently needed by the Association to pay for such overhead expenses; **shall be made only for overhead expenses approved by Commodity as reasonable and necessary**; and shall be made only to the extent that the overhead expenses exceed 12 cents per hundred pounds, green weight, of loan tobacco. (Emphasis supplied.)

"(2) Any funds collected by the Association from tobacco growers either directly or through warehousemen in addition to the 12 cents per cwt. referred to in subparagraph 1 (a) (other

In accordance with the provisions of the loan contracts, the Association submitted budgets of proposed overhead expenses to Commodity for approval for each of the four crop years in question. In some instances Commodity refused to approve these proposed budgets on the ground that they were excessive and required that they be reduced before funds for overhead expenses were advanced.[7]

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than permanent membership fees or stock sales to obtain capital funds) shall be utilized, first, to finance activities and expenditures of the Association relating to Burley Tobacco other than overhead costs of handling loan tobacco; second, to establish reasonable reserves as approved by Commodity; and third, to pay overhead costs of handling loan tobacco which would otherwise be advanced by Commodity.

* * * * * * * *

"12 (e) If the Association expects to request funds from Commodity during the period of this Agreement for use in payment of overhead costs, the Association shall submit to Commodity budgets of expenditures, the first of such budgets to be submitted prior to the incurring of any obligations by the Association. The form of such budgets shall be acceptable to Commodity and shall contain such details as may be requested by Commodity both as to use of such funds and use of any other funds available to the Association for payment of overhead costs."

[7] For example, the Acting Director of the Commodity Stabilization Service, Tobacco Service, wrote the following letter to the Association disapproving the proposed budget for 1955:

"This is in reply to your letter of December 30, 1955, to Mr. Miller, enclosing a revised budget of overhead expenses in the amount of $59,589.00 for the current operating year.

"It is regretted that we are unable to approve the revised budget. In view of the quantity of tobacco pledged for CCC loans prior to the holidays, it appears that the total quantity of 1955 crop tobacco pledged by your organization may not reach 5,000,000 pounds. Total overhead costs of almost $60,000, therefore, probably will reflect a cost of $1.20 per cwt. or more. We have recently reviewed the overhead costs of all of the Associations which handle the tobacco price support program in the Burley and flue-cured areas and find that the average overhead cost up to the present time of handling the 1946 through 1954 crops was 30.3 cents per cwt. The expenses of your organization for the same period are by far the highest in the group and have exceeded 75 cents per cwt., the figures being incomplete because we have not as yet received requested reports of your expenses for the past year. All of the other

During each of the four years the Association expended more for overhead than it borrowed. It contends, and we think correctly, so, that budgets had to be submitted only if the Association expected to borrow overhead funds from Commodity. The Association further asserts that it used its own funds for overhead expenses for sound business purposes, such as to avoid the payment of interest, and that these overhead expenses were incurred with the knowledge of Commodity and with the understanding that they would be reimbursed.

We find that it was contemplated that Commodity would make loan contracts in administering the tobacco price support program and that Commodity was to make payments in the form of loans. See Senate Report on the Commodity Corporation Charter Act of June 29, 1948, 1948 U. S. Code Congressional Service, pp. 2138, 2145. We construe the contracts in the present case as conforming to this policy.

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organizations, large and small, are able to carry out on a satisfactory basis their obligations under the price support program, more economically than the Tennessee Burley Tobacco Growers Association.

"As we have previously indicated, **we seriously question whether the total expenses of the Association relate entirely to and are necessary for the satisfactory operation of the price support program.** One possible method of determining what portion of the expenses are applicable to price support activities would be to 'departmentalize' your organization and its operations. This would require allocation of each expense item as between price support operations and other activities, and probably would not be especially practicable. Another possible solution would be for the Association to finance its overhead costs with its own funds, without borrowing from CCC. (Emphasis supplied.)

"The only other alternative we see at the present time is to establish a limitation as to the amount which CCC will advance to the Association for overhead costs. Under the circumstances, we are unwilling to advance CCC funds for overhead in excess of 75 cents per cwt. for 1955 crop operations during the current year, including the 12 cents per cwt. deducted from the loan rates."

Commodity had no power to prevent the Association from expending its own funds.[8] It sought broader powers and controls over the operations and expenditures of the Association during the unsuccessful negotiations for a loan agreement for the crop year 1953 by insisting upon including in the contract the provision quoted in the margin.[9] When the Association declined to agree to this provision, no contract was executed between the parties for 1953, and a contract was awarded to another Tennessee cooperative for that crop year. The Secretary of Agriculture subsequently instructed Commodity not to insist on this language, and it was not included in the 1954 and 1955 contracts.

Since Commodity had no control over overhead expenditures made by the Association from its own funds, assuredly it cannot be held liable to reimburse such expenditures in the absence of a clear contractual provision to that effect. We find no such provisions in the contracts for the crop years in question. To the contrary we do not construe the contracts to make Commodity liable for any of the Associations' overhead expenses except those approved in advance and included in loan payments.

We reject a construction of the contracts which would deprive the Government of control over the amounts to be

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[8] After Commodity had refused to approve its 1952 budget, the Association reduced its proposed overhead expenses for that year and submitted a lower budget, saying:

"To the degree that the Association's actual overhead of the period December 1, 1951 to November 30, 1952 exceeds the overhead funds provided for above, the Association will use funds otherwise available to it to meet the additional amount of overhead. * * *"

[9] Commodity insisted that the following provisions be included in the contract for 1953 and future years:

"The Association shall submit for approval by Commodity periodic budgets of estimated income and expenditures as requested. The Association shall conduct its operations in accordance with such approved budgets and shall submit operating and other financial statements as requested by Commodity."

advanced or reimbursed to cover overhead expenses in connection with the price support loan program. We find no provision that reasonably could be construed as conferring upon the Association carte blanche authority to obligate the Government for any and all overhead expenses it might see fit to incur. Such fiscal irresponsibility on the part of Commodity is not lightly to be inferred.

As said by the Supreme Court in **Federal Crop Ins. Corp. v. Merrill**, *supra*, 332 U. S. 381, 385:

> "The oft-quoted observation in **Rock Island, Arkansas & Louisiana Railroad Co. v. United States**, 254 U. S. 141, 143, that 'Men must turn square corners when they deal with the Government,' does not reflect a callous outlook. It merely expresses the duty of all courts to observe the conditions defined by Congress for charging the public treasury."

The Cross-appeal.

On its cross-appeal the Association complains of the district court's refusal to award it reimbursement for $48,704.32 spent by the Association for overhead expenses, which sum represented consignment fees of three cents per cwt. collected by the Association from warehousemen. The warehousemen in turn had collected such fees from the growers. The Association argues that the contracts contemplated that the use of such fees for overhead expenses would only be temporary, that the Association could recoup these sums out of the proceeds from the sale of the tobacco, and that if the sale proceeds were insufficient, the Association could recover these from Commodity.

We find no language in the contracts and no evidence of conduct of the parties supporting this contention. We hold that the district court was correct in refusing to allow a recovery against Commodity for these expenses.

The judgment of the district court with respect to the cross appeal is affirmed. In all other respects the judgment of the district court is reversed and the complaint is dismissed.

The original hereof was filed or entered and docketed Dec. 28, 1963.

In the United States District Court
For the Eastern District of Tennessee,
Northeastern Division.

Tennessee Burley Tobacco Growers' Association,
Plaintiff,
vs.
Commodity Credit Corporation,
Defendant.
} Civil Action. No. 1602.

Memorandum Opinion.

As a part of the program of national economic recovery instituted during the depression of the 1930's, the Congress declared that the disruption of the orderly exchange of agricultural commodities in interstate commerce impaired the purchasing power of farmers and destroyed the value of agricultural assets which support the national credit structure, and that these conditions affected transactions in agricultural commodities with a national public interest and burdened and obstructed the normal channels of interstate commerce. 7 U. S. C., § 601. The Congress adopted policies in 1933 designed, *inter alia,* to establish and maintain such orderly marketing conditions for agricultural commodities moving in interstate commerce as would establish parity prices for farmers and protect the interests of consumers by a gradual correction of the (then) current level of prices as rapidly as the

authorized executive deemed same to be in the public interest and feasible in the light of current demands of consumers in domestic and foreign markets. 7 U. S. C., § 602. These policies were to be implemented through the exercise of powers conferred on the Secretary of Agriculture.

In the Agricultural Adjustment Act of 1949, 7 U. S. C., §§ 1421, *et seq.*, the Congress imposed on the agricultural secretary the mandatory duty of providing the price supports it had authorized, through the defendant Commodity Credit Corporation, and other means available to him, and empowered him to operate the price support program in such manner as he might determine or approve. 7 U. S. C., § 1421 (a) and (b). Commodity, a corporate agency and instrumentality of the United States, 15 U. S. C., §§ 714, *et seq.*, was the entity through which the Secretary implemented the burley tobacco price support program in Tennessee for the crop years which this litigation involves.[1]

Prior to the crop year 1946, Commodity supported prices on tobacco grown by Tennessee farmers through a Kentucky cooperative marketing association. At the instance of the Tennessee Farm Bureau Federation and other affected Tennessee groups, a farmers' cooperative marketing association thereafter was organized and incorporated in Tennessee under the name of Tennessee Burley Tobacco Growers' Association; and, except for 1953, the plaintiff Association was utilized by Commodity as its agent to administer the burley tobacco price support program within Tennessee for the crop years 1946 through 1955. Commodity provided funds for the purpose of assuring farmers an adequate price for their tobacco by means of non-recourse demand loans to as-

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[1] The burley tobacco crop year extends from December first through the following November thirtieth.

sociations of farmers on each crop, equal to 90% of a fixed price, called "parity". It was the business of the Association, by means of consignment, to take possession of, and at a time thereafter which appeared to be advantageous, to resell and to repay to Commodity out of the proceeds of the resale of all the crop under loan for any given year, the loan which Commodity had made for that crop year, plus all expenses advanced to the Association incident to such marketing. **Neas v. Tennessee Burley Tobacco Growers' Ass'n.** (1959), 204 Tenn. 405, 321 S. W. (2d) 802, 803. Thus the Association was the administering agent of Commodity in the implementation of the price support program of the Secretary of Agriculture, except as to the crop year 1953, on burley tobacco produced by Tennessee growers for the crop years 1946 through 1955. **Range v. Tennessee Burley Tobacco Growers' Ass'n.**, C. A. Tenn. (1956), 41 Tenn. App. 667, 687, certiorari denied (1957), 355 U. S. 813, 78 S. Ct. 11, 2 L. Ed. (2d) 39; **Neas v. Tennessee Tobacco Growers' Ass'n.**, *supra*, 321 S. W. (2d) at page 806 [3]; and, the rights of Tennessee producers under the burley tobacco price support program for those years were based on the agency of the Association for Commodity for the receipt of their tobacco and the final resale thereof. **Neas v. Tennessee Burley Tobacco Growers' Ass'n.**, *supra*, 321 S. W. (2d) at page 806 [3].

In furtherance of their general agency, the parties entered into contracts, known as tobacco loan agreements, relating to the conduct of the price support program within Tennessee for the aforementioned crop years. Thereunder, for those crop years, the Association purchased all tobacco its members sold through tobacco auction warehouses unless the individual "baskets" of tobacco offered for private sale on high bids had produced bids of one point, or more, above the support price previously established by the Secretary for the given crop year. The auction ware-

houseman immediately paid the producer the supported price and was subsequently reimbursed by the Association from funds it borrowed from Commodity by loan agreement. In addition to borrowing the full 90% of the parity price with which to reimburse the auction warehouseman, as aforesaid, the Association could—and customarily did—borrow sufficient amounts from Commodity for the Association's expenses incurred in transporting, insuring, redrying, recording, regrading, fumigating, packing, sampling, inspecting, storing and reselling the tobacco it purchased. Also, the Association could—and sometimes did—borrow additional amounts from Commodity to defray its overhead expenses. The tobacco thus bought by the Association was pledged to Commodity as collateral for all amounts borrowed, for whatever purpose, referable to the given crop years involved.[2] Several years ordinarily elapsed between the Association's original purchase of the tobacco from the growers and its eventual resale, so the Association's agency as to each crop year extended longer than the crop year, *supra*. Frequently, it was necessary or desirable to regrade some portions of the collateral before resale. In those instances, Commodity established prices to guide the Association in its effort to resell the regraded tobacco. In so far as the Court can ascertain, however, there was no specific agreement between the parties as to which would bear any loss arising from the administration of the support program if the collateral was not resold for a sufficient amount to bear all such expenses.

When the Association was in the process of formation, the auction warehousemen, who were in position to benefit from its organization and operations, agreed to pay the Association three cents per hundred-weight (3¢ per cwt.)

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[2] It was Commodity's theory, *infra*, that the collateral could be sold thereafter for an aggregate amount sufficient to recoup all amounts expended in connection with the delayed sale of the crop, so that all costs of operating the program might be paid by the fruits of the producers' initiative.

on all tobacco purchased from growers through the respective facilities of the auction warehousemen. By regulations having the force and effect of law, **Federal Crop Ins. Corp. v. Merrill** (1947), 332 U. S. 380, 68 S. Ct. 1, 92 L. Ed. 10, 15 [headnote 5], 175 A. L. R. 1075, the Association was required to bear a portion of the overhead costs in connection with the loan operation and was authorized to charge the growers a fee of twelve cents per hundredweight (12¢ per cwt.), and such other deductions authorized or approved by Commodity for such purpose. 20 F. R. 3526, § 464.704[3] The Association also constructed and operated four storage warehouses and earned storage fees in connection therewith, *infra*. From these and other sources, including its receipt of a substantial aggregate of dues payments by its members, the Association acquired funds of its own.

Under the provisions of the memorandum of agreement between the parties, Commodity agreed to lend the Association the amounts the latter advanced to growers in purchasing their tobacco, *supra*, less the 12¢ per cwt. to be deducted from such payment, and the amount necessary to cover the Association's overhead expenses in connection with its administration of the tobacco price support program. With reference to overhead expenses, the memorandum provides that loans would be made to the Association only for current needs approved by the defendant, Commodity, as being "* * * reasonable and necessary * * *" and only to the extent that they exceeded the 12¢ per cwt. mentioned, *supra*. It was further provided therein that any funds, other than the aforesaid fee of 12¢ per cwt. collected through auction warehousemen and proceeds of membership fees and capital stock sales, would be uti-

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[3] This regulation permitted the Association to collect its fee by a deduction from the sale of the farmers' tobacco or by arrangements whereby the auction warehousemen would collect such charges and remit them to the Association.

lized by the Association, first, to finance its expenses of a non-overhead or direct-cost[4] nature in implementing the tobacco price support program; secondly, to establish reasonable reserves as might be approved by Commodity;[5] and, finally, to pay the [indirect] overhead costs of handling the tobacco which "* * * would otherwise be advanced * * *" by Commodity. The immediately preceding language suggests to the Court that the parties understood mutually that there might be overhead expenses which the Association itself might advance for the program, which the Association would not borrow from Commodity, and that the parties intended that the Association would recoup such expenses from the final resale of the collateral. Certainly, this was the understanding of the Association's management.

This memorandum of agreement also established a procedure by which the Association would submit budgets for Commodity's approval, if the former expected to obtain advances for the expenses of its operations with regard to the support program. On approval of these budgets, the Association drew funds as needed from Commodity's fiscal agent, the Louisville Bank for Cooperatives.

It was the contractual duty of the Association to resell all of the tobacco in its inventories for the respective crop years at the highest price obtainable and to remit to Commodity, for application on the various crop-year loans, the gross proceeds therefrom, less accrued charges assignable to that year which had been approved by Com-

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[4] Expenses in connection with the physical handling of the tobacco are sometimes referred to as "direct costs", while all other overhead expenses are sometimes considered 'indirect costs".

[5] The parties had agreed that the respective sums of $18,741.52 and $120,029.06 might be withheld by the Association as reserve funds and not distributed to its producer-members. This non-distribution led to many facets of litigation between the Association and its members, as a class.

modity. For the crop years 1947 through 1950, inclusive, the Association expended for (indirect) overhead expenses an aggregate of $163,827.75 more than Commodity had advanced it for such purposes. However, the Association was able to resell the support tobacco for each of those crop years for respective aggregate amounts sufficient to repay all sums borrowed from Commodity, with interest, and, in addition, to recoup all its overhead expenses which it had advanced from its own funds and not borrowed from Commodity. No prohibition is found in the agency contract or in the tobacco loan agreements between the parties which prohibited the Association's expending its own funds in any amounts it deemed expedient in operating the price support program. The only requirement was that Commodity approve the utilization of funds it lent the Association for reasonable and necessary overhead (or indirect) expenses.

The reasons the management of the Association assigns for use of its own funds to defray some of its overhead expenses in this connection, when funds were available to it for these purposes by way of loan, are sound and sensible, *viz.*: first, the Association desired to reduce the interest the producers, through the Association, would be required to pay on all sums borrowed from Commodity;[6] and secondly, it was difficult to ascertain in advance the quantities of tobacco which the Association would purchase and handle from each crop. Obviously, overhead expenses varied in proportion to the quantity of tobacco the Association handled for Commodity from each crop. It must be remembered that Commodity undertook to operate the program in such manner that the growers' tobacco would be sold eventually for a sufficient amount to recoup the entire cost of operating the program. This policy is clearly set forth by recorded actions taken by Commodity's directors, as follows:

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[6] The producers share in all net gains from the operation of the program, *infra*.

"* * * Certain costs are incurred upon tobacco in addition to the amount actually advanced on the tobacco at the time it is placed under loan. These costs are for redrying, packing, transportation, storage, inspection at redrying plants, fumigation, risk of loss, record keeping, and sales operations. All costs will be advanced by CCC and charged against the tobacco. Therefore, the entire amount of the operating cost ultimately will be borne by producers, if the tobacco is sold for enough to repay the loan and costs. . . . " Tobacco Loan Docket, Commodity Credit Corporation, § II-E.

While the tobacco from the crop years 1946 through 1950, inclusive, achieved the foregoing objective, this goal was not attained as to the crop years 1951, 1952, 1954 and 1955. The applicable loan collateral for each of those years was not resold for enough to repay the respective loans and operating costs. In the process, the Association failed to recoup a net aggregate of $175,047.69, which amount it had advanced in its operation of the support-price program. This is the amount the Association now seeks to recover from Commodity.

Significant in the agency relationship of these parties is Commodity's evident displeasure with certain of the Association's activities which had no direct bearing on the administration of the support-price program. These activities and the displeasure of Commodity's officials with them seem to have strained the relationship severely.

The first of these activities involved the entry of the Association into the tobacco storage warehouse field. There were not sufficient facilities available in the Tennessee market area to store all the tobacco produced,[7] so the Association utilized its capital to construct, in

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[7] See fn. 6, *supra*.

1949, the first of four storage warehouses.[8] The rationale behind this project was that the producers' tobacco was being impressed with the direct costs of transportation to out-of-state storage in jurisdiction where the tobacco was further impressed with the direct cost of state taxes on such storage. A greater objection to the Association's activities emanated from its entry into the tobacco redrying field. This was done ostensibly to reduce the lag between the time the Association purchased the producers' tobacco and the accomplishment of the necessary redrying process. The Association formed a subsidiary corporation for this purpose and lent it funds with which to construct and operate a redrying plant. The venture was not successful, and the Association thereby sustained an unrecouped loss of some $133,000.

When the time came to negotiate a new contract for the crop year 1953,[9] relations between the parties had deteriorated markedly. Commodity advised the Association and similar organizations, *inter alia,* that it would not enter into further agency contracts with them unless they submitted to complete operational control by Commodity. The unprecedented provision Commodity demanded be included in future contracts included the following, *viz.*:

> "The Association shall submit for approval by Commodity periodic budgets of estimated income and expenditures as requested. The Association **shall conduct its operations in accordance with** such approved budgets and shall submit operating and other financial statements as requested by Commodity." (Emphasis added.)

The Association declined to agree to the inclusion of this new language in its agency agreement, and, as a

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[8] Commodity's officials assisted the Association in obtaining the necessary steel allocations for this construction.

[9] New and separate contracts were negotiated by the parties for each crop year.

result, the Association was not given a contract for the 1953 crop year.[10] The Secretary of Agriculture subsequently directed Commodity to not insist on the inclusion of the offending language, *supra*, and loan contractual relations were resumed by the parties for the crop years 1954 and 1955. Although the Association sought new contracts for 1956 and subsequent crop years, Commodity declined to delegate it such further agency.

The Association had not resold all the tobacco in its inventories for the crop years 1951, 1952, 1954 and 1955 by May 21, 1958, but had remitted to Commodity an aggregate of over $9 millions from resales of portions of those crops. In accordance with a directive received from Commodity in May, 1957, all subsequent gross proceeds therefrom were remitted to Commodity's fiscal agent, without the Association's making any of the deductions contemplated by the aforesaid written memorandum of the parties. The Association so remitted over $2 million in 1957 and 1958. During the years the parties had no active agency agreements (i. e., the crop years of 1953, 1956, 1957 and 1958) the Association incurred a portion of the aforesaid aggregate of its overhead expenses in the performance of its required functions for Commodity under contracts for the crop years 1951, 1952, 1954 and 1955.

Commodity called the outstanding balances on all loans then due from the Association on May 21, 1958. The Association was unable to pay the loans, and in August, 1958, under a writ of replevin issued by this court, Commodity recovered possession of the collateral for those years. This collateral was from several crop years and was commingled with other inventories for the same crop

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[10] The 1953 tobacco loan contract was awarded to Tennessee Farmers' Marketing Association which engaged the management of the Association to operate the support program for that year in the new contractee's behalf.

years formerly held by other organizations and resold for Commodity by a cooperative marketing association other than the plaintiff.[11] The Association was adjudged a bankrupt in this court on June 30, 1959. The trustee in bankruptcy instituted this action, but on July 5, 1963, he assigned the bankrupt's interest in this action to the Association.

The Association complains that Commodity's recovering of the collateral tobacco by replevin for the crop years involved resulted in an unnecessary loss to all parties concerned. It insists that the immediate resale of the collateral tobacco at the graded prices previously suggested therefor by Commodity would have resulted in the repayment of all of the principal amounts on the outstanding balances due on its loans, together with a portion of the interest; but that the long delay[12] between the recovery of the collateral by Commodity and its resale on a bid, rather than on the suggested-price basis, resulted not only in huge losses on the loans, but also precluded the Association's opportunity to recoup its own losses for unadvanced overhead expenses.[13]

Under questioning by the Court, with one exception,[14] every federal agricultural official who testified conceded that the Association's disbursements for overhead ex-

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[11] This pooling arrangement was authorized by both law and contract.

[12] The respective crops involved were finally sold on the dates hereinafter indicated:

1951 crop—December, 1960
1952 crop—February, 1960
1954 Crop—June, 1960
1955 crop—July, 1959

[13] Determination of that issue is not necessary to this adjudication.

[14] Frank R. Ellis, an official of the tobacco division.

penses unquestionably were related to its administration of the price-support program. These witnesses were not asked whether these disbursements met the contractual test of "* * * reasonable and necessary * * *" overhead expenses necessary for tobacco loan purposes; they were asked, merely, whether the Association spent the money in furtherance of its administrative agency.[15] The Court, therefore, finds that such was the purpose of these controverted disbursements.

It is stipulated that the original claim of the Association for reimbursement of $48,704.32 was improper, because the Association recouped that sum through its collection of 12¢ per cwt. as its agency fee; so, the Court finds that the aggregate the Association, as agent, expended for overhead expenses properly relating to the price support programs for the crop years 1951, 1952, 1954 and 1955 amounted to an aggregate sum of $175,047.69, which it has not recouped.

Shall this loss be borne by the plaintiff Association because it sought to utilize its own (unborrowed) funds to defray a portion of its expenses in acting as the agent of the defendant Commodity in implementing the burley tobacco price support program within Tennessee, or should Commodity, which the Secretary of Agriculture was utilizing to conduct such burley tobacco price support program, stand the loss?

The Congress has declared by statute that no producer shall be personally liable for any deficiency arising from

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[15] The Association deleted from its claim all amounts which might have been objectionable to Commodity if loans as overhead expenses had been sought for such items. These include expenses of membership relations, research, farmer educational programs, litigation, etc., which the agreement of the parties contemplated would be borne by the Association as a part of its overhead costs. See language from loan agreements, *supra*.

the sale of the collateral securing any loan made under the authority of the Agricultural Adjustment Act of 1949 except where the producer obtains the loan by means of fraudulent representations. 7 U. S. C., § 1425. The obvious intention of the Congress in this enactment was to relieve fraud-free growers of any pecuniary responsibility from the administration by the Secretary of Agriculture of the price support program. **Autrey v. Commodity Credit Corporation,** D. C. Ark. (1956), 143 F. Supp. 550, 553-554 [2], does not appear to be *contra* authority. There, District Judge Lemley concluded "* * * that Congress in adopting Section 1425 simply intended to absolve producers from personal liability for loan deficiencies resulting from sales of pledged commodities at price levels lower than the support prices in force at the time loans were made, while leaving the Corporation free to require such borrowers to assume **personal liability for deficiencies in quantity, quality or grade of the pledged commodities, or for failure to properly preserve and care for such commodities, or for the failure or refusal to make delivery of the same** to the Corporation. * * *" (Boldface supplied for emphasis.) [143 F. Supp. at page 554.] These untoward possibilities imply the nature of fraud, which is not present in the case at bar. The question before this Court now was not the question before Chief Judge Lemley at that time.

The plaintiff is a cooperative marketing association of burley tobacco producers. The legislative history of the Agricultural Adjustment Act of 1949, and earlier statutes of similar import, indicate to this Court that the Congress intended that the pecuniary responsibility for the administration of the price support program would be borne by the Government, not by the producers. To say that this statute contemplated deficiencies resulting only from sales of collateral for the loans is to impute to the Congress a narrow absolution inconsistent

with the remedial recovery program it instituted. It is true that the public officers administering the details of this recovery program, as it pertained to burley tobacco, sought to impress the entire expenses of the support program upon the fruits of the producers' labors. See Tobacco Loan Program Docket, Commodity Credit Corporation, § II-E, *supra*. This was a commendable objective, if the collateral sold for sufficient amounts to repay the loans and all costs of operating the program; but, the contract between these parties derived its efficacy from the Agricultural Adjustment Act of 1949, and earlier statutes of similar nature, and it is circumscribed by all the pertinent provisions of that statute. **City of Tullahoma v. Coffee County, Tenn.**, D. C. Tenn. (1962), 204 F. Supp. 794, 800 [13], citing **Armour Packing Co. v. United States** (1908), 209 U. S. 56, 28 S. Ct. 428, 52 L. Ed. 681. Commodity could not, by contractual provisions or otherwise, deprive these producers of the absolution the Congress granted them by statute.

The Association was engaged by the defendant Commodity to perform detailed functions in behalf of the latter; and, under such circumstances, the law implies a promise of reimbursement for necessary expenses advanced or incurred by the Association in order to consummate what the Association agreed to do, where the acts were in the scope of its agency. 3 Am. Jur. (2d) 612, § 243; **cf. Lawrence Warehouse Co. v. Twohig**, C. A. 8th (1955), 224 F. (2d) 493; **Differential Steel Car Co. v. MacDonald**, C. A. 6th (1950), 180 F. (2d) 260; **A. B. Frank Co. v. Waldrup**, C. A. Tex. (....), 71 S. W. 298. That the Association was, in fact, the agent of the defendant Commodity in the implementation of the burley tobacco price support program within Tennessee has long been established. **Neas v. Tennessee Burley Tobacco Ass'n**, *supra*; **Range v. Tennessee Burley Tobacco Growers' Ass'n**, *supra*; **In the Matter of Tennessee Burley Tobacco Growers' Association**,

Bankrupt. In Bankruptcy No. 6045, D. C. Tenn. (1961), memorandum opinion of Bankruptcy [unpublished]; see also **Stroud v. Benson,** D. C. N. C. (1957), 155 F. Supp. 482, 493 [9, 10].

In the final analysis, the net equities of the Association belong to its producer-members, whether such equities are in the form of a revolving capital fund, or otherwise. **Neas v. Tennessee Burley Tobacco Growers' Ass'n,** *supra,* 298 S. W. (2d) at page 548, citing **Range v. Tennessee Burley Tobacco Growers' Ass'n,** *supra,* 321 S. W. (2d) at page 548. If the Association's unrecouped overhead expenses, which the Association disbursed in furtherance of its agency relation with Commodity, are not reimbursed by Commodity, then, certain of the Association's producer-members will be denied a distribution of net gains to which they are entitled; so that, in effect, those producers would become liable for such loss contrary to the plain Congressional intention. 7 U. S. C., § 1425.

Two legal defenses interposed by Commodity remain for disposition: (a) it is claimed that the remittance by the Association of the proceeds of sale from the loan collateral tobacco for the years involved here, without the Association's deducting therefrom any of the unrecouped overhead expenses it seeks now to recover, constituted a voluntary payment which precludes its recovery of these expenses in this action; and, (b) it is further insisted that this action is barred by the applicable statute of limitations. 15 U. S. C., § 714b (c).

Neither of these positions is tenable. The foregoing payments by the Association were not voluntary. It was indebted to Commodity under demand notes which could be called at any time. When, in May, 1957, Commodity directed the Association to remit in the future the full proceeds from resales of collateral tobacco to the former's

fiscal agent without any deductions for overhead expenses, the Association, which had a vested property right in the proceeds that Commodity could not, consistently with the law, abrogate or destroy, had to choose whether to comply with the said directive or face the prospect of having its extensive loans called. The proceeds, thus, were not paid voluntarily but "* * * by coercive means,—by compulsion. * * *" **Cf. Ward v. Love County** (1920), 253 U. S. 17, 40 S. Ct. 419, 64 L. Ed. 751, 758-759. Where, as here, moral duress, not justified by law, "* * * is exerted under circumstances sufficient to influence the apprehensions and conduct of a prudent business man, payment of money wrongfully induced thereby ought not to be regarded as voluntary. * * *" **Robertson v. Frank Brothers Company** (1889), 132 U. S. 17, 10 S. Ct. 5, 33 L. Ed. 236, 238. Until May 21, 1958, there existed the possibility that the Association might resell the tobacco, which was collateral for its loans, for a sum sufficient to repay the principal and interest of all outstanding loan balances **and** recoup its overhead expenses, as had been done with reference to earlier crop years. Thus, the six-year limitation period under the statute applicable to this action, *supra*, did not begin to run until that date, and this action is timely. "* * * It is of the essence of these statutes that time begins to run under them as to causes of action only after the right to prosecute them to a successful conclusion has fully accrued. It is of their essence that each cause of action has its own limitation, each is barred only when the time limited as to it has run. * * *" **Federal Reserve Bank v. Atlanta Trust Co.**, C. A. 5th (1937), 91 F. (2d) 283, 286 [5, 6].

Other arguments advanced by the parties have been answered by this memorandum, in which appear the required special findings of fact and conclusions of law. Rule 52 (a), Federal Rules of Civil Procedure.

The Court, having decided that the plaintiff Tennessee Burley Tobacco Growers' Association shall recover the sum of $175,047.69 herein, the clerk will forthwith prepare, sign and enter judgment for that amount against the defendant Commodity Credit Corporation. Rule 58, Federal Rules of Civil Procedure.

File:

C. G. NEESE,
United States District Judge.

For publication.

In the
United States District Court
For the Eastern District of Tennessee,
Northeastern Division.

Tennessee Burley Tobacco Growers' Association, Plaintiff, vs. Commodity Credit Corporation, Defendant.	Civil Action. No. 1602.

Judgment.

(The original hereof was filed or entered and docketed Jan. 6, 1964.)

This action came on for trial before the Court, Honorable C. G. Neese, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It Is Ordered and Adjudged that the plaintiff, Tennessee Burley Tobacco Growers' Association, recover of the defendant, Commodity Credit Corporation, the sum of

$175,047.69, with interest thereon at the rate of 6% as provided by law, and its costs of action.

James W. Parrott,
Clerk of the Court.

Attest:

A true copy.

Certified this Jan. 6, 1964,
James W. Parrott, Clerk,
By: Earl Kelly,
Deputy Clerk.

In the
United States District Court
For the Eastern District of Tennessee,
Northeastern Division.

Tennessee Burley Tobacco Growers' Association,
Plaintiff,
vs.
Commodity Credit Corporation,
Defendant.

Civil Action.
No. 1602.

Order.

(Jan. 16, 1964.)

It having been stipulated that "there is included in the plaintiff's claim $48,704.32 reflected by consignment fees at three cents per hundred-weight and that if the Court finds this sum should have been used by the plaintiff to defray overhead expenses, plaintiff's claim would be reduced to $173,121.16", and the Court having found that said consignment fees should have been so used to defray overhead expenses,

It Is Ordered and Adjudged that the judgment heretofore entered in this cause be reduced to $173,121.16, and upon the payment into the registry of this Court of said sum plus interest and costs, the judgment heretofore entered herein shall be satisfied.

Enter

C. G. Neese,
United States District Judge.

Approved for Entry:

Arthur G. Seymour,
Burwell Building,
Knoxville, Tennessee,

R. Arnold Kramer,
Burwell Building,
Knoxville, Tennessee,
Attorneys for Plaintiff,

J. H. Reddy,
United States Attorney,

By David E. Smith,
Assistant U. S. Attorney,
Attorney for Defendant.

APPENDIX B.

7 U. S. C. 1421 (a), 1425, 1428 (c) and 1441 (Agricultural Adjustment Act of 1949).

§ 1421. **Price support—Source.**

"(a) The Secretary shall provide the price support authorized or required herein through the Commodity Credit Corporation and other means available to him."

" 1425. **Personal liability of producers for deficiencies.**

"No producer shall be personally liable for any deficiency arising from the sale of the collateral securing any loan made under authority of this Act unless such loan was obtained through fraudulent representations by the producer. This provision shall not, however, be construed to prevent the Commodity Credit Corporation or the Secretary from requiring producers to assume liability for deficiencies in the grade, quality, or quantity of commodities stored on the farm or delivered by them, for failure properly to care for and preserve commodities, or for failure or refusal to deliver commodities in accordance with the requirements of the program. * * *"[1]

" 1428. **Definitions.**

"For the purposes of this Act—

"(c) A 'basic agricultural commodity' shall mean corn, cotton, peanuts, rice, tobacco, and wheat, respectively."

"§ 1441. **Price support levels.**

"The Secretary of Agriculture (hereinafter called the 'Secretary') is authorized and directed to make available

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[1] In 1958 Congress, by Public Law 85-835, added an additional sentence to this section but such sentence is not copied herein because it was not the law at the time the loan agreements involved in this litigation were executed.

through loans, purchases, or other operations, price support to cooperators for any crop of any basic agricultural commodity, if producers have not disapproved marketing quotas for such crop, at a level not in excess of 90 per centum of the parity price of the commodity nor less than the level provided in subsections (a)-(c) of this section as follows:"

15 U. S. C. 714b (c), (g) and (m), and 714j (Commodity Credit Corporation Act).

"§ 714b. **General powers of Corporation.**

"The Corporation—

* * * * * * *

"(c) May sue and be sued, but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Corporation or its property . . ."

* * * * * * *

"(g) May enter into and carry out such contracts or agreements as are necessary in the conduct of its business . . ."

* * * * * * *

"(m) Shall have such powers as may be necessary or appropriate for the exercise of the powers specifically vested in the Corporation, and all such incidental powers as are customary in corporations generally . . ."

"§ 714j. **Utilization of associations and trade facilities.**

"The Corporation may, in the conduct of its business, utilize on a contract or fee basis, committees or associations of producers, producer-owned and producer-controlled co-operative associations, and trade facilities."

28 U. S. C. 1346 (a) (2) (Tucker Act).

"§ 1346. **United States as defendant.**

"(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

* * * * * * * *

"(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

March 2, 1919, C. 94, 40 Stat. 1272 (Dent Act).

"**Chap. 94—An Act to provide relief in cases of contracts connected with prosecution of the war, and for other purposes.**

"Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the Secretary of War be, and he is hereby, authorized to adjust, pay, or discharge any agreement, express or implied, upon a fair and equitable basis that has been entered into, in good faith during the present emergency and prior to November twelfth, nineteen hundred and eighteen, by any officer or agent acting under his authority, direction, or instruction, or that of the President . . ."

43-1803 Tennessee Code Annotated (Tennessee Cooperative Marketing Associations).

"43-1803. **Definitions.**—

"* * * Associations organized hereunder shall be deemed 'nonprofit', inasmuch as they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers."

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205-470—66

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 781

TENNESSEE BURLEY TOBACCO GROWERS' ASSOCIATION,
PETITIONER

v.

COMMODITY CREDIT CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1) is reported at 350 F. 2d 34. The opinion of the district court (Pet. App. 22) is not reported.

JURISDICTION

The judgments of the court of appeals on the appeal and cross appeal were entered on September 2, 1965 (Pet App. 44–45). The petition for a writ of certiorari was filed on November 29, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in light of express provisions of the contracts between Commodity Credit Corporation and petitioner under the tobacco price support loan program, the court below correctly held that Commodity was liable only for those overhead expenses that had been incurred by petitioner with Commodity's prior approval.

STATUTES INVOLVED

Section 401(a) of the Agricultural Act of 1949, as amended, 7 U.S.C. 1421(a), provides:

> The Secretary shall provide the price support authorized or required herein through the Commodity Credit Corporation and other means available to him.

Section 405 of the Act, 7 U.S.C. 1425, provides:

> No producer shall be personally liable for any deficiency arising from the sale of the collateral securing any loan made under authority of this Act unless such loan was obtained through fraudulent representations by the producer. This provision shall not, however, be construed to prevent the Commodity Credit Corporation or the Secretary from requiring producers to assume liability for deficiencies in the grade, quality, or quantity of commodities stored on the farm or delivered by them, for failure properly to care for and preserve commodities, or for failure or refusal to deliver commodities in accordance with the requirements of the program. There is authorized to be included in the terms and conditions of any such nonrecourse loan a provision

whereby on and after the maturity of the loan or any extension thereof Commodity Credit Corporation shall have the right to acquire title to the unredeemed collateral without obligation to pay for any market value which such collateral may have in excess of the loan indebtedness.

STATEMENT

Commodity Credit Corporation, a corporate instrumentality of the United States Government, is authorized by the Commodity Credit Corporation Charter Act, 15 U.S.C. 714, *et seq.*, and the Agricultural Act of 1949, as amended, 7 U.S.C. 1421, *et seq.*, to support the prices of certain agricultural commodities through loans. For the crop years 1946 through 1955 (except 1953) Commodity entered into a series of loan agreements with petitioner, the Tennessee Burley Tobacco Growers Association (an association of over 70,000 Tennessee tobacco growers or producers (App. 136a)),[1] for the purpose of supporting tobacco prices (App. 34a–49a, 119a, 273a). Under the support program, the grower-members of the Association brought their tobacco to an auction warehouse (App. 122a) where commercial tobacco buyers bid on it. If the bid price on a member's crop was less than the percentage of parity price established by the Secretary of Agriculture, the Association purchased the tobacco at this support price (App. 123a), using the

[1] "App.", with page designations ending in "a", refers to the printed appendix filed in the court of appeals by Commodity.

money loaned it by Commodity (App. 125a). The Association would then re-dry and store the tobacco in warehouses until it was later resold (App. 123a–125a). It was hoped that the stored tobacco could be eventually resold at prices sufficient to cover the support price at which the Association had bought the tobacco, plus all expenses (App. 145a–146a, 284a–285a), in which event the entire loan would be repaid to the government. If, however, there was a deficiency between the amounts of the loans and the amounts eventually realized in reselling the tobacco (as happened for the crop years 1951, 1952, 1954, and 1955), Commodity was required, under 7 U.S.C. 1425 (*supra*, pp. 2–3), to absorb it.

The particular controversy in this case relates to the overhead expenses (*i.e.*, in handling, storing, and reselling the tobacco) incurred by the Association for the 1951, 1952, 1954 and 1955 crop years. The loan contracts entered into between Commodity and the Association for each of these crop years provided[2] that the growers would pay the Association 12 cents per hundredweight to be applied to overhead expenses (App. 35a), and that Commodity would lend the Association an amount to cover overhead expenses of the Association in connection with loan tobacco, subject to the following conditions:

> (1) Request for payment shall be made only * * * to pay for such overhead expenses; *shall be made only for overhead expenses approved by Commodity as reasonable and necessary;*

[2] The terms of the contracts were substantially identical (Pet. App. 17; App. 34a–49a, 119a–120a).

> and shall be made only to the extent that the overhead expenses exceed 12 cents per hundred pounds, green weight, of loan tobacco. [App. 36a; emphasis supplied.]

The Association also agreed in the contracts (App. 43a):

> If the Association expects to request funds from Commodity during the period of this Agreement for use in payment of overhead costs, the Association shall submit to Commodity budgets of expenditures, the first of such budgets to be submitted prior to the incurring of any obligations by the Association. The form of such budgets shall be acceptable to Commodity and shall contain such details as may be requested by Commodity both as to use of such funds and use of any other funds available to the Association for payment of overhead costs.[3]

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[3] The contracts also provided that any funds collected from the growers—either directly or through warehousemen—above the 12 cents per hundredweight should also be used, *inter alia*, "to pay overhead costs of handling loan tobacco which would otherwise be advanced by Commodity" (App. 36a). In addition, if the Association desired to spend greater sums for expenses than those amounts received from the growers and warehousemen plus the amounts approved and loaned by Commodity for expenses, the Association had other funds which could be utilized for this purpose (from $3.00 lifetime membership dues; from profits it made in operating tobacco storage warehouses; and from undistributed net gains, over the amounts of loans, from the sale of tobacco crops for prior years (App. 16a, 136a–140a, 275a)); and Commodity had no authority under the loan contracts to prevent the Association from incurring such additional expenses (App. 135a, 139a, 230a–231a).

Pursuant to these provisions, the Association submitted to Commodity budgets of proposed overhead expenses for each of the four crop years in question for Commodity's approval (App. 70a, 72a, 75a, 82a, 95a). In some instances, Commodity refused to approve these proposed overhead expense budgets as initially submitted on the ground that the proposed expenses were excessive, and approved them only when the amounts requested by the Association had been substantially reduced (App. 71a–75a, 77a, 93a–94a, 96a). The Association also submitted, pursuant to the contracts and proposed budgets, requests for payment of specific overhead expenses; these, too, were sometimes disapproved by Commodity because of excessiveness (App. 87a–90a, 92a, 98a–99a).[4] In spite of Commodity's disapproval of some of the proposed overhead expenses, and its refusal to advance the Association all that the Association desired for overhead, the Association nevertheless (as it was entitled to do, see n. 3, *supra*) decided to incur $173,121.16 of overhead expenses for the crop years 1951, 1952, 1954 and 1955, in excess of the 12 cents per hundredweight collected from the growers, the fees collected from the warehousemen, and the amounts loaned by Commodity (App. 283a, 289a).

Because of disagreements between Commodity and the Association, no loan contracts were entered into

[4] Prior to December, 1954, specific requests for payment of overhead expenses, pursuant to a previously approved budget, were submitted by the Association to Commodity's fiscal agent, the Louisville Bank for Co-operatives. However, beginning in December 1954, such requests for payment of overhead were submitted directly to Commodity (App. 85a–86a, 133a–134a).

after the 1955 crop year (App. 111a–116a, 281a),[5] and the existing loans were recalled in May 1958 (App. 105a, 281a). The Association was unable to pay, and Commodity replevied the remainder of the tobacco (App. 16a, 281a) and sold it (App. 117a, 282a), resulting in a deficiency of $1,207,273.59, which Commodity paid.

The Association brought this action (App. 1a) in a federal district court seeking reimbursement from Commodity of $221,825.48 in overhead expenses. This sum consisted of (1) the amount of $48,704.32, representing the sum total of the three cents per hundredweight which had been paid by warehousemen and used for overhead (see n. 3, *supra*), and (2) the amount of $173,121.16 representing the overhead expenses incurred by the Association in addition to the fees per hundredweight collected and the amounts advanced by Commodity (App. 289a). After trial, the district court held that Commodity was liable to the Association for the $173,121.16 of unadvanced overhead expenses, but not for the $48,704.32 representing expenses paid for out of the three cents per hundredweight collected from the warehousemen (App. 289a). The Court of Appeals for the Sixth Circuit, on Commodity's appeal, reversed the judgment entered by the district court against Commodity on the $173,121.16 item and, on the Association's cross-appeal, affirmed the

[5] The disagreements related to Commodity's disapproval of the Association's operating its own storage warehouses and redrying plants for the loan tobacco, and the fact that the Association incurred much higher overhead expenses than other associations handling a comparable amount of tobacco (App. 112a, 215a–222a, 279a–280a).

district court's judgment refusing to grant the Association the other item of $48,704.32 (Pet. App. 21–22).

ARGUMENT

The decision of the court of appeals turns on a narrow question of contract interpretation, is limited to the particular type of contracts here involved, and is controlled by the explicit provisions of those contracts (Pet. App. 17). Moreover, it is, we submit, plainly correct and there is no conflict between circuits. Accordingly, further review is not warranted.

1. The primary purpose of the loans by Commodity to the Association was to enable the Association to bid in its growers' tobacco at the support price. Commodity agreed also to lend the Association such overhead expenses as Commodity might approve in advance, but the contract provided expressly (see p. 4, *supra*) that Commodity assumed no liability for any overhead expenses incurred by the Association without its prior approval. Since there was no such prior approval for the expenses here in issue, the court below correctly held that the Association was not entitled to reimbursement (Pet. App. 20).[6] Any other reading of the contract, as the court below observed (Pet. App. 20–21), must be rejected because it

> would deprive the Government of control over the amounts to be advanced or reimbursed to cover overhead expenses in connection with the

[6] By like reasoning, as the court also pointed out, Commodity was not liable under the contract for the $48,704.32 claim of the Association, representing fees collected by the Association without Commodity's authorization from warehousemen (Pet. App. 21).

price support loan program. We find no provision that reasonably could be construed as conferring upon the Association carte blanche authority to obligate the Government for any and all overhead expenses it might see fit to incur. Such fiscal irresponsibility on the part of Commodity is not lightly to be inferred.

2. The Association's contention (Pet. 9) that 7 U.S.C. 1425 would be made "inoperative" by the decision of the court of appeals is without merit. The statute provides only that no *producer* shall be liable for any deficiency arising from the sale of the tobacco, and this does not entitle the *Association* to recover from Commodity amounts which the Association expended for unapproved overhead expenses. Commodity fully complied with the provisions of 7 U.S.C. 1425, since the producers—the growers—received the statutory 90 percent of parity price for their tobacco and the government absorbed the full loan deficiency arising from the resale of the tobacco. The entire difference between the amounts of the loan used to pay the growers and defray expenses, and the amounts ultimately received for the tobacco, was absorbed by the government; that is all the statute requires. Certainly, Congress did not contemplate that in addition to the government's absorbing the full loan deficiency, and after the growers had received the full support price for their tobacco, an association of growers could require the government to reimburse it for additional expenses which had not been covered by the loan for the very reason that the government disapproved of them.

3. Petitioner also argues that "the law of agency implies a promise by Commodity to reimburse the Association for the overhead expenses involved herein" (Pet. 14–15). The argument is without merit; no such promise may be implied. First, the relationship between Commodity and the Association was not that of principal and agent; it was a creditor-debtor relationship such as exists under numerous government loan programs. Second, even if the relationship was that of principal-agent, there could be no implied promise to pay under the facts of the present case, where the "agent's" overhead expenses were not only unauthorized, but actually disapproved, by its "principal". Finally, the settled rule that the United States is not subject to implied-in-law contractural obligations precludes the imposition upon Commodity of any liability based on the "implied promise" theory. *United States* v. *Minn. Investment Co.*, 271 U.S. 212, 217.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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